Supreme Court, U.S.
FILED
MAY 8 2003
CLERK

No. 02-628

In the Supreme Court of the United States

LINDA FREW, ON BEHALF OF HER DAUGHTER, CARLA FREW, ET AL., PETITIONERS

v.

ALBERT HAWKINS, COMMISSIONER, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether a State that voluntarily seeks entry of a consent decree in federal court waives its Eleventh Amendment immunity from actions to enforce the decree.

2. Whether the Eleventh Amendment bars a federal district court from enforcing a consent decree that contains prospective relief against state officials based on alleged violations of federal law where a violation of the decree does not also constitute an independent violation of federal law that is remediable under 42 U.S.C. 1983.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	6
Argument:	
Judicial enforcement of the consent decree in this case does not violate the Eleventh Amendment	9
I. A State that voluntarily seeks entry of a consent decree in federal court waives its immunity from actions to enforce that decree	10
A. A State waives its immunity when it voluntarily submits its rights for judicial determination	10
B. A State that consents to entry of a judicial decree voluntarily submits its rights for judicial determination and waives immunity from actions to enforce the decree	13
C. The considerations that underlie the voluntary submission doctrine apply with particular force here	17
D. The court of appeals' analysis is unpersuasive	19
II. The Eleventh Amendment does not bar enforcement of a consent decree that provides prospective relief against state officials based on alleged violations of federal law	21
Conclusion	24

TABLE OF AUTHORITIES

Cases:	
Clark v. *Barnard*, 108 U.S. 436 (1883)	9, 10, 11

Cases—Continued: Page

Ford Motor Co. v. *Department of Treasury of Ind.*, 323 U.S. 459 (1945) 13
Gardner v. *New Jersey*, 329 U.S. 565 (1947) 10
Gunter v. *Atlantic Coast Line R.R.*, 200 U.S. 273 (1906) 7, 10, 11, 15, 23
Hans v. *Louisiana*, 134 U.S. 1 (1890) 9
Harris v. *McRae*, 448 U.S. 297 (1980) 2
Humphrey v. *Pegues*, 83 U.S. (16 Wall.) 244 (1872) 11
Hutto v. *Finney*, 437 U.S. 678 (1978) 22, 23
Kokkonen v. *Guardian Life Ins. Co.*, 511 U.S. 375 (1994) 15, 16, 18, 22
Kozlowski v. *Coughlin*, 871 F.2d 241 (2d Cir. 1989) 17, 23
Lapides v. *Board of Regents of the Univ. Sys. of Ga.*, 535 U.S. 613 (2002) ..... *passim*
Lawyer v. *Department of Justice*, 521 U.S. 567 (1997) 20
Local No. 93, Int'l Assoc. of Firefighters v. *City of Cleveland*, 478 U.S. 501 (1986) 4, 14, 16, 23
Mitchell v. *Commission on Adult Entm't Establishments*, 12 F.3d 406 (3d Cir. 1993) 18
New Hampshire v. *Maine*, 532 U.S. 742 (2001) 17
Rufo v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) 9, 14, 15, 18, 19, 23
Spallone v. *United States*, 493 U.S. 265 (1990) 16, 23
United States v. *Armour & Co.*, 402 U.S. 673 (1971) 17
United States v. *Swift & Co.*, 286 U.S. 106 (1932) 14
Vecchione v. *Wohlgemuth*, 558 F.2d 150 (3d Cir.), cert. denied, 434 U.S. 943 (1977) 23
Verizon Md. Inc. v. *Public Serv. Comm'n*, 535 U.S. 635 (2002) 21
Wisconsin Hospital Ass'n v. *Reivitz*, 820 F.2d 863 (7th Cir. 1987) 23

Cases–Continued: Page

Young, Ex parte, 209 U.S. 123 (1908) 4, 8, 21
Young v. *Unied States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987) 18

Constitution, statutes and rules:

U.S. Const.:
Art. III 8, 17, 18
Amend. XI ..... *passim*
42 U.S.C. 1396 *et seq.* 2
42 U.S.C. 1396a(a)(43) 1, 2
42 U.S.C. 1396b(a)(1) 2
42 U.S.C. 1396d(b) 2
42 U.S.C. 1396d(r) 1, 2
42 U.S.C. 1983 ..... 3, 4, 8, 22
Fed. R. Civ. P.:
Rule 23(e) 3
Rule 60(b)(5) 18

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INTEREST OF THE UNITED STATES

The questions presented in this case concern whether the Eleventh Amendment bars enforcement of a consent decree that is designed to ensure that state officials comply with the requirements of Medicaid's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, 42 U.S.C. 1396a(a)(43), 1396d(r). The United States has a significant interest in the resolution of that issue. The Secretary of Health and Human Services administers the Medicaid program, and the United States funds at least 50% of a State's Medicaid costs. The United States has an interest in ensuring that the duties that States volun-

tarily assume under the EPSDT program are enforced in a manner that protects the beneficiaries of the program, but avoids interference with federal oversight and a State's legitimate discretion. The question whether the Eleventh Amendment bars enforcement of a consent decree that is designed to ensure compliance with the requirements under the EPSDT program implicates those federal interests.

STATEMENT

1. The Medicaid program is a cooperative federal-state public assistance program that provides federal financial assistance to States that elect to pay for the medical services of certain needy individuals. See 42 U.S.C. 1396 *et seq.*; *Harris* v. *McRae*, 448 U.S. 297, 301 (1980). Federal funding is calculated according to a statutory formula that pays, at a minimum, 50% of the State's costs. 42 U.S.C. 1396b(a)(1), 1396d(b). State participation in the Medicaid program is optional, but once a State elects to participate, it must comply with the requirements of the Medicaid statute. See *Harris*, 448 U.S. at 301. The State of Texas participates in the Medicaid program.

The Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, 42 U.S.C. 1396a(a)(43), 1396d(r), is a component of the Medicaid program. Under the EPSDT program, a State's Medicaid plan must provide for (1) informing eligible Medicaid recipients under the age of 21 of the availability of screening, diagnostic, and treatment services, (2) arranging screening services where they are requested, and (3) arranging necessary corrective treatment. 42 U.S.C. 1396a(a)(43).

2. In 1993, several mothers of children eligible for EPSDT services in Texas (petitioners), filed suit in federal district court against Texas state officials responsible for administering the EPSDT program (respondents). Petitioners alleged that Texas was violating its obligations under the EPSDT program, and they sought prospective relief under 42 U.S.C. 1983. Pet. App. 54a-56a.[1]

The district court certified a class consisting of children in Texas entitled to EPSDT services. Pet. App. 54a. Respondents moved to dismiss, on the ground that EPSDT's provisions do not create rights that are enforceable under Section 1983. *Id.* at 233a-234a. The district court denied the motion. *Id.* at 234a. After two years of negotiation, the parties proposed a consent decree to the court. *Id.* at 57a. Pursuant to Federal Rule of Civil Procedure 23(e), the district court held a hearing to determine whether to enter the proposed decree. During the hearing, the parties urged the court to approve the decree. Pet. App. 57a. In 1996, the district court approved the decree as fair, reasonable, and adequate. *Ibid.*

The decree recites that "[t]he parties agree and the Court orders Defendants to implement the * * * changes and procedures for the Texas EPSDT program" set forth in the decree. Consent Decree para. 6. The decree also specifies that it creates "mandatory, enforceable obligation[s]." *Id.* at para. 302. The decree authorizes petitioners to "request relief from the Court" if respondents' future activities do not "comport with the terms and intent of [the] Decree." *Id.* at para. 303. The decree explains that "the agreements negotiated by the parties which led to this Order were

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[1] Petitioners also named state agencies as defendants, but the district court dismissed them from the case. Pet. App. 234a.

reached within the framework of federal law related to the EPSDT and Medicaid programs." *Id.* at para. 308.

3. In 1998, petitioners filed a motion alleging that respondents had failed to comply with certain provisions of the decree. Petitioners sought enforcement of those provisions. Pet. App. 58a-59a. Respondents argued that they had complied with the decree. *Id.* at 58a. In the alternative, they argued that the Eleventh Amendment bars enforcement of the decree unless a violation of the decree constitutes an independent violation of federal law that is remediable under 42 U.S.C. 1983. Pet. App. 58a. After an evidentiary hearing, the district court found that respondents had violated various provisions of the decree. *Id.* at 59a-232a. The court ordered respondents to propose corrective action to remedy those violations. *Id.* at 277a.

The district court held that the Eleventh Amendment does not bar enforcement of the decree's provisions. Pet. App. 245a-275a. The court reasoned that, because petitioners seek prospective relief against state officials, this case "falls squarely within the *Ex Parte Young* exception to the Eleventh Amendment." *Id.* at 246a n.197.

Relying on *Local Number 93, International Association of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 525 (1986), the district court rejected petitioner's contention that *Ex parte Young*, 209 U.S. 123 (1908), does not justify enforcement of the decree against state officials unless a violation of the decree independently violates federal law and is remediable under Section 1983. The court held that under *Firefighters*, a federal court may order relief in a consent decree that exceeds the requirements of federal law as long as the decree resolves a dispute within the court's subject matter jurisdiction, comes within the general scope of the case

made by the pleadings, and furthers the objectives of the law upon which the complaint was based. Pet. App. 247a. The court concluded that the necessary implication of *Firefighters* is that a court may enforce provisions in the decree that satisfy those standards. *Id.* at 248a-260a. The court noted that respondents did not argue that the provisions of the decree at issue here fail to satisfy the *Firefighters* standards. The court also independently concluded that the provisions satisfy those standards. *Id.* at 260a-275a.

In rejecting respondent's Eleventh Amendment argument, the district court also observed that it would "detract from the integrity of the court" to allow state defendants "to avoid bargained-for obligations while receiving the benefit of escaping litigation and potential liability." Pet. App. 259a. The court added that "such decree nullification would leave little incentive for future parties to enter into voluntary agreements, which avoid often protracted and time-consuming litigation." *Ibid.*

4. The court of appeals reversed. Pet. App. 1a-53a. The court held that under *Ex parte Young*, prospective relief in a consent decree may be enforced against state officials only to the extent that a violation of the decree also independently violates a "specific statutory provision that is actionable under § 1983." *Id.* at 28a. Relying on prior circuit precedent, the court concluded that while *Firefighters* authorizes a court to enter a consent decree that includes provisions that exceed the requirements of federal law, it does not authorize a court to enforce those provisions against state officials. *Id.* at 21a-23a.

The court of appeals also held that respondents did not waive the State's immunity by voluntarily seeking entry of the consent decree. Pet. App. 39a-42a. The

court acknowledged that "[a] consent decree is akin to a contract yet also functions as an enforceable judicial order." *Id.* at 7a (internal quotation marks and citation omitted). The court also recognized that the consent decree at issue in this case "contemplates continuing oversight of the agreement by the district court." *Id.* at 8a-9a. Nonetheless, the court of appeals concluded that respondents had not "unequivocally expressed" an intent to waive Eleventh Amendment immunity. *Id.* at 41a. In support of that conclusion, the court noted that respondents had not conceded liability, that they had raised an Eleventh Amendment defense in district court after petitioners moved to enforce the consent decree, and that respondents were defendants in the underlying litigation. *Id.* at 41a-42a.

SUMMARY OF ARGUMENT

At the urging of the State's officials, the consent decree entered by the district court in this case awards prospective relief against state officials based on alleged violations of federal law. Enforcement of the decree does not violate the Eleventh Amendment for two reasons.

I. First, this Court's cases establish that a State waives its immunity from suit when it voluntarily submits its rights for determination by a federal court. *Lapides* v. *Board of Regents of the Univ. Sys. of Ga.*, 535 U.S. 613 (2002). A State that urges a federal court to enter a consent decree does precisely that. An essential characteristic of a consent decree is that it emanates from the parties' voluntary agreement. At the same time, it is a judgment of a court that finally resolves claims within the court's jurisdiction. Accordingly, when a State seeks to have a consent decree embodied in a federal court order, it voluntarily submits its rights for judicial determination and waives its immunity from suit.

That waiver encompasses not only entry of the decree, but also its enforcement. By definition, a consent decree is an agreement that the parties intend to be judicially enforceable. The agreement in this case is no exception. It specifies that it creates enforceable obligations, and it expressly authorizes the beneficiaries of the decree to seek enforcement of those obligations.

Even if the State's officials had not so clearly consented to the decree's enforcement, the court would have had authority to enforce it based on the officials' consent to the decree's entry. Under this Court's decisions, the Eleventh Amendment has no application to an ancillary proceeding to enforce a judgment against a State, as long as the court legitimately acquired jurisdiction over the State in the original proceeding that led to the judgment. *Gunter* v. *Atlantic Coast Line R.R.*, 200 U.S. 273 (1906). That principle is applicable here. Having acquired jurisdiction over state officials for purposes of entering the decree based on their consent, the court had ancillary authority to enforce the decree against them without their consent.

Other important considerations support the conclusion that a State that seeks entry of a consent decree waives any Eleventh Amendment objection to its enforcement. First, it is inconsistent for a State both to consent to the entry of an enforceable decree and then deny that a court has jurisdiction to enforce the decree. Second, permitting a State to make both claims would produce unfair results. It would allow a State to avoid its bargained for obligations, while retaining the benefit of concessions it obtained on other issues; and it would mean that a State that has voluntarily entered a decree would be free to disavow the judgment at any time.

Such a rule also would significantly undermine the authority and judgments of Article III courts in cases that are properly before them.

To the extent that a decree contains provisions that are inequitable, a State may seek the decree's modification. But having consented to entry of a decree, a State may not simply refuse to comply and then resist enforcement on Eleventh Amendment grounds.

II. The decree in this case is also enforceable under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908). Under that doctrine, a suit that alleges a violation of federal law and seeks prospective relief against state officials does not implicate the Eleventh Amendment. The decree in this case awards prospective relief against state officials based on alleged violations of federal law. It therefore falls squarely within the *Ex parte Young* doctrine. Moreover, in exercising their authority under *Ex parte Young*, federal courts are not limited to issuing injunctions and hoping for compliance; they also have authority to enforce their injunctions.

The court of appeals did not question the district court's authority to enter the decree. Instead, it concluded that the district court lacked authority to enforce the decree except to the extent that petitioners could show that a violation of the decree independently violates the federal law the suit was brought to enforce and that such a violation of law is actionable under 42 U.S.C. 1983. But if a federal court can validly enter a decree, it can surely enforce it. Any other rule would allow state officials who have urged a court to award relief that exceeds the requirements of federal law to disregard with impunity the very order they sought.

The court of appeals concluded that it violates state sovereignty to require state officials to comply with requirements that exceed those imposed by federal law.

But this Court has made clear that state officials may settle litigation through a consent decree that contains relief that exceeds what federal law requires. *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). State officials need not enter into such a decree. But if they do, a federal court may enforce the decree to the same extent that it may enforce any other valid judgment.

ARGUMENT

JUDICIAL ENFORCEMENT OF THE CONSENT DECREE IN THIS CASE DOES NOT VIOLATE THE ELEVENTH AMENDMENT

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit * * * commenced or prosecuted against one of the United States by Citizens of another State." The principle of sovereign immunity embodied in the Eleventh Amendment also extends to suits against a State brought by citizens of the same State. *Hans* v. *Louisiana*, 134 U.S. 1 (1890).

Petitioners' action to enforce the consent decree in this case does not implicate the Eleventh Amendment for two reasons. First, a State's immunity from suit in federal court is "a personal privilege which it may waive at pleasure." *Clark* v. *Barnard*, 108 U.S. 436, 447 (1883). When respondents consented to entry of the decree, they waived whatever immunity they possessed from actions to enforce the decree against them. Second, the decree in this case provides prospective relief against state officials based on alleged violations of federal law. Under the doctrine of *Ex parte Young*, the Eleventh Amendment does not bar enforcement of such a decree.

I. A STATE THAT VOLUNTARILY SEEKS ENTRY OF A CONSENT DECREE IN FEDERAL COURT WAIVES ITS IMMUNITY FROM ACTIONS TO ENFORCE THAT DECREE

A. A State Waives Its Immunity When It Voluntarily Submits Its Rights For Judicial Determination

1. This Court's precedents firmly establish that a State waives its immunity from suit when it invokes federal court jurisdiction or otherwise voluntarily submits its rights for judicial determination. *Lapides* v. *Board of Regents of the Univ. Sys. of Ga.*, 535 U.S. 613, 620 (2002). For example, in *Clark*, the Court held that a State that made a "voluntary appearance" in federal court by intervening to assert a claim to money sought by the plaintiff had waived its immunity from suit. 108 U.S. at 447-448. Similarly, in *Gardner* v. *New Jersey*, 329 U.S. 565 (1947), the Court held that a State that voluntarily filed a proof of claim in bankruptcy waived its immunity respecting the adjudication of that claim.

Clark and *Gardner* involved States that entered federal court voluntarily rather than being brought in through coercive process. The waiver principle at issue here, however, also applies when a State is brought into federal court through coercive process, but then voluntarily submits its rights for judicial determination rather than asserting an immunity defense. *Gunter* v. *Atlantic Coast Line R.R.*, 200 U.S. 273 (1906).

Gunter involved a suit to enforce a federal court decree. In earlier litigation, a railroad had sued to enjoin the collection of taxes. The State, through the state officials who were named as defendants, did not interpose an Eleventh Amendment defense, but instead litigated the case on the merits. The district court enjoined the collection of taxes, and this Court affirmed.

Humphrey v. *Pegues*, 83 U.S. (16 Wall.) 244 (1872). When the railroad later sought to enforce the decree in the district court, the State argued that, by virtue of the Eleventh Amendment, it was not bound by the original decree. The Court rejected that contention, explaining, *inter alia*, that "where a State voluntarily becomes a party to a cause and submits its rights for judicial determination, it will be bound thereby and cannot escape the result of its own voluntary act by invoking the prohibitions of the Eleventh Amendment." 200 U.S. at 284 (citing *Clark* v. *Barnard*, 108 U.S. at 447). The Court also concluded that the state officers' participation in the prior proceedings was on behalf of the State and therefore bound the State. 200 U.S. at 284-289. The Court explained that the State officers were "the agents voluntarily appointed by the State to defend its rights and submit them to judicial determination." *Id.* at 289.

The Court also rejected the State's contention that it could renew its claim of immunity as a defense to the motion to enforce the decree. The Court held that "[n]one of the prohibitions * * * of the [Eleventh] Amendment * * * relate to the power of a Federal court to administer relief in causes where jurisdiction as to a State and its officers has been acquired as a result of the voluntary action of the State in submitting its rights to judicial determination." *Gunter*, 200 U.S. at 292. The Court emphasized that the claim that the Eleventh Amendment "control[s] a court of the United States in administering relief, although the court was acting in a matter ancillary to a decree rendered in a cause over which it had jurisdiction, is not open for discussion." *Ibid.*

2. In *Lapides*, the Court held that *Clark*, *Gardner*, and *Gunter* establish a general principle that a State

waives its immunity from suit when it voluntarily invokes a federal court's jurisdiction or otherwise submits its rights for judicial determination. 535 U.S. at 620. That principle, the Court explained, is supported by two important considerations. First, it "would seem anomalous or inconsistent for a State both (1) to invoke federal jurisdiction, thereby contending that the 'Judicial power of the United States' extends to the case at hand, and (2) to claim Eleventh Amendment immunity, thereby denying that the 'Judicial power of the United States' extends to the case at hand." *Lapides*, 535 U.S. at 619. Second, "a Constitution that permitted States to follow their litigation interests by freely asserting both claims in the same case could generate seriously unfair results." *Ibid.*

Applying the general principle that a voluntary submission to a federal court waives immunity from suit, the *Lapides* Court held that the State of Georgia waived its immunity when it removed a case from state court to federal court. The Court recognized that the State had been sued as a defendant and thus was not a voluntary party to the litigation. 535 U.S. at 620. The Court stressed, however, that the State had voluntarily removed the case to federal court. *Ibid.* In doing so, the State had "voluntarily invoked the federal court's jurisdiction" and waived its immunity from suit. *Ibid.*

The Court rejected the State's contention that equating removal with waiver violates the principle that a waiver of immunity requires a clear intent to waive. The Court explained that waiver in the litigation context "rests upon the [Eleventh] Amendment's presumed recognition of the judicial need to avoid inconsistency, anomaly, and unfairness, and not upon a State's actual preference or desire." 535 U.S. at 620. Accordingly, "[t]he relevant 'clarity' here must focus on

the litigation act the State takes that creates the waiver. And that act—removal—is clear." *Ibid.*

The Court also found unpersuasive the State's claim that waiver should not be found because it joined in removal for a benign reason—to afford individual state officers who were also named as defendants the generous interlocutory appeal provisions available in federal court. The Court concluded that "the State's Eleventh Amendment position would permit States to achieve unfair tactical advantages, if not in this case, in others." 535 U.S. at 621.

Finally, the Court rejected the State's argument based on *Ford Motor Co.* v. *Department of Treasury of Indiana*, 323 U.S. 459 (1945), that the state attorney general's absence of authority under state law to waive the State's sovereign immunity precluded a finding of waiver. The Court held that whether litigation conduct amounts to a waiver of Eleventh Amendment immunity is a question of federal law, and that, under the applicable federal rule, a state attorney general's invocation of federal-court jurisdiction waives a State's immunity from suit. *Lapides*, 535 U.S. at 622. The Court overruled *Ford* "insofar as it would otherwise apply." *Id.* at 623.

B. A State That Consents To Entry Of A Judicial Decree Voluntarily Submits Its Rights For Judicial Determination And Waives Immunity From Actions To Enforce The Decree

1. Under the voluntary submission principle reaffirmed in *Lapides*, a State that urges a court to adopt a consent decree waives any Eleventh Amendment objection to the court's entry of that decree. A State's action in seeking entry of a consent decree is entirely voluntary. Indeed, "the voluntary nature of a consent

decree is its most fundamental characteristic." *Local Number 93, Int'l Assoc. of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 521-522 (1986). At the same time, a consent decree is not merely a private contract. It is also a judgment of a court that finally resolves claims within the court's jurisdiction. *United States* v. *Swift & Co.*, 286 U.S. 106, 116-117 (1932). The decree may provide broader relief "than a court could have decreed after a trial," although it must "spring from and serve to resolve a dispute within the court's subject-matter jurisdiction," come "within the general scope of the case made by the pleadings," and further "the objectives of the law upon which the complaint was based." *Firefighters*, 478 U.S. at 525 (internal quotation marks and citation omitted). Accordingly, when a State seeks to have a consent decree embodied in a federal court order, it voluntarily submits its rights for judicial determination. *Lapides*, 535 U.S. at 620. Under this Court's decisions, such a voluntary submission waives any Eleventh Amendment objection to a court's entry of the decree.

2. By urging a court to adopt a consent decree, a State not only waives any Eleventh Amendment objection to entry of the decree. It also waives any Eleventh Amendment objection to its judicial enforcement. By definition, a consent decree "is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). In fact, the prospect of enforcement by the court that enters the consent decree is often the reason that parties choose consent decrees over private contractual settlements. As this Court has explained, out-of-court settlements "suffer the decisive

handicap of not being subject to continuing oversight and interpretation by the court," while consent decrees enable a court to draw on a "flexible repertoire of enforcement measures." *Firefighters*, 478 U.S. at 523-524 n.13 (internal quotation marks and citation omitted); accord *Kokkonen* v. *Guardian Life Ins. Co.*, 511 U.S. 375, 380-381 (1994).

The decree in this case leaves no doubt that the parties intended for it to be judicially enforceable. It specifies that it contains "mandatory, *enforceable* obligation[s]," Consent Decree para. 302 (emphasis added), and it expressly authorizes petitioners to "request relief from the Court" if the respondents' future activities do not "comport with the terms and intent of [the] Decree," *id.* at para. 303. Thus, just as respondents consented to entry of the decree, they also consented to its enforcement.

3. Even if respondents had not so explicitly consented to the decree's enforcement, the court would have had authority to enforce it based on respondents' consent to its entry. Having acquired jurisdiction over respondents for purposes of entering the decree based on their consent, the court had ancillary authority to enforce the decree against them without their consent. *Gunter*, 200 U.S. at 292. As explained in *Gunter*, the Eleventh Amendment does not "control a court of the United States in administering relief" where the court is acting "in a matter ancillary to a decree rendered in a cause over which it had jurisdiction." *Ibid.*

Gunter involved a fully litigated judgment. But since consent decrees are "subject to the rules generally applicable to other judgments and decrees," *Rufo* 502 U.S. at 378, the same principle applies when a court seeks to enforce a consent decree. Just as a court has inherent authority to enforce its litigated judgments, it likewise

has inherent authority to enforce its consent judgments.

The Court's decision in *Kokkonen* is instructive. There the Court held that a federal court does not have inherent authority to enforce a settlement agreement that is not embodied in a court order. The Court made clear, however, that the situation is different when an agreement is embodied in a court order. The Court specifically explained that "if the parties' obligation to comply with the terms of [a] settlement agreement" is "made part of" a court order—"either by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement) or by incorporating the terms of the settlement agreement in the order," then "a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist." 511 U.S. at 381. Other decisions similarly recognize a court's inherent authority to enforce a consent judgment. *Spallone* v. *United States*, 493 U.S. 265, 276 (1990) ("In selecting a means to enforce the consent judgment, the District Court was entitled to rely on the axiom that 'courts have inherent power to enforce compliance with their lawful orders through civil contempt.'") (citation omitted); *Firefighters*, 478 U.S. at 518 ("noncompliance with a consent decree is enforceable by citation for contempt of court"). Because respondents in this case consented to entry of the decree, the court had inherent authority to enforce the decree against them.

C. The Considerations That Underlie The Voluntary Submission Doctrine Apply With Particular Force Here

The considerations that underlie the voluntary submission doctrine strongly support the conclusion that a State that seeks entry of a consent decree by a federal district court waives any Eleventh Amendment objection to enforcement of the decree. In such a case, entry of the decree is not merely the ultimate consequence of a State's litigation judgment at an earlier stage of the case. Rather, the State, by consenting to the decree, has consented to that very exercise of the core "judicial Power of the United States" (U.S. Const. Art. III) of entering a judgment in the case. In these circumstances, it truly "would seem anomalous or inconsistent" for a State both to consent to the entry of a decree, and then deny that a court has jurisdiction to enforce the decree. *Lapides*, 535 U.S. at 619; cf. *New Hampshire* v. *Maine*, 532 U.S. 742, 749 (2001).

Equally important, permitting a State to make both claims "could generate seriously unfair results." *Lapides*, 535 U.S. at 619. A consent decree ordinarily reflects a compromise: "[I]n exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation." *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971). If a State could assert an immunity from enforcement of a decree to which it consented, it would allow the State to avoid its bargained-for obligations, while retaining the benefit of concessions it obtained on other issues. *Kozlowski* v. *Coughlin*, 871 F.2d 241, 245 (2d Cir. 1989). Moreover, it would mean that despite voluntarily entering into a consent decree, a State would be free at any time to dis-

avow the judgment on Eleventh Amendment grounds. *Mitchell* v. *Commission on Adult Entm't Establishments*, 12 F.3d 406, 408-409 (3d Cir. 1993). "[T]hose who wrote the Eleventh Amendment" did not "intend to create that unfairness." *Lapides*, 535 U.S. at 622. Nor did those who wrote the Eleventh Amendment intend to allow a party to so disregard the judgment of an Article III court. See *Kokkonen*, 511 U.S. at 380-381; *Young* v. *United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796 (1987).

Permitting States to engage in such tactics also would not serve the long-term interests of the States generally. As the district court explained, "principles of comity and federalism are furthered when state defendants draft their own documents setting out the means by which they will come into compliance with federal law." Pet. App. 258a. "To the extent such documents are later held unenforceable by federal courts, the incentives for plaintiffs to enter into such voluntary agreements with defendants are lessened if not wholly removed." *Ibid.*

A State that has entered into a decree may have legitimate reasons for wanting to be relieved of obligations imposed by a consent decree. A State in that situation, however, is not without recourse. Federal Rule of Civil Procedure 60(b)(5) expressly permits a litigant to seek modification or vacatur of a decree when prospective enforcement is no longer equitable. In *Rufo*, the Court held that courts should apply a particularly flexible modification standard in cases where a decree constrains the authority of a public entity. 502 U.S. at 383. To warrant a modification, a public entity need only show "a significant change either in factual conditions or in law." *Id.* at 384. A court should then modify the decree in a way that is

tailored to the changed circumstance. *Id.* at 391. A lesser showing is required with respect to provisions in the decree that do not "arguably relate[] to the vindication of a [federal] right." *Id.* at 383-384 n.7. In such circumstances, a court should modify the decree if the party seeking modification has a "reasonable basis for its request." *Ibid.*

Respondents remain free to attempt to persuade the district court that the equitable standards set forth in *Rufo* warrant a modification of one or more provisions in the consent decree. They are not free, however, to disregard the decree and then invoke the Eleventh Amendment as a bar to the decree's enforcement.

D. The Court Of Appeals' Analysis Is Unpersuasive

In holding that respondents were free to assert an Eleventh Amendment defense to enforcement of the decree, the court of appeals reasoned that respondents had not "unequivocally expressed" an intent to waive the States's Eleventh Amendment immunity. Pet. App. 41a. As support for that conclusion, the court observed that respondents had not conceded liability, that respondents had raised the Eleventh Amendment defense in district court after petitioners moved to enforce the consent decree, and that respondents were defendants in the underlying litigation. *Id.* at 41a-42a. That rationale is seriously flawed.

As *Lapides* makes clear, in determining whether a State has waived its Eleventh Amendment immunity through litigation conduct, the question is not whether the State has "unequivocally expressed" an intent to waive its immunity. *Lapides*, 535 U.S. at 620. Instead, the question is whether the State has clearly submitted its rights to a federal court's determination. *Ibid.* The reason is that waiver through litigation conduct rests

upon the need "to avoid inconsistency, anomaly, and unfairness, and not upon a State's actual preference or desire, which might, after all, favor selective use of 'immunity' to achieve litigation advantages." *Ibid.* A State that seeks entry of a consent decree unequivocally submits its rights to a federal court's determination. That act is therefore sufficient to waive the State's immunity.

The court of appeals' additional observations are all beside the point. A concession of liability is not a precondition to entry of a consent decree, *Lawyer* v. *Department of Justice*, 521 U.S. 567, 578-579 & n.6 (1997), and respondents' failure to make such a concession does not alter the crucial fact that respondents voluntarily entered into a consent decree and urged the court to embody the decree in an enforceable judgment.

Respondents' assertions of Eleventh Amendment immunity in response to petitioners' motion to enforce the decree came too late. Under this Court's cases, once the State waives its immunity by submitting its rights to a federal court's determination, it cannot rescind its waiver. Otherwise, the State could engage in the very litigation tactics that the voluntary submission doctrine is designed to prevent.

Finally, respondents' status as defendants has no relevance here. *Gunter* and *Lapides* both involved state parties who were initially brought into the litigation involuntarily as defendants. In both cases, however, the state defendants subsequently submitted their rights to a federal court determination, and that conduct waived immunity from suit. The situation is the same here.[2]

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[2] The court of appeals did not address respondents' contention that a finding of waiver is precluded because the officials who entered the decree lacked state-law authority to waive the State's immunity. That argument, however, is foreclosed by *Lapides*. 535 U.S. at 623 (state attorney general's invocation of federal court jurisdiction waives the State's immunity from suit, without regard to whether the attorney general has authority under state law to waive).

II. THE ELEVENTH AMENDMENT DOES NOT BAR ENFORCEMENT OF A CONSENT DECREE THAT PROVIDES PROSPECTIVE RELIEF AGAINST STATE OFFICIALS BASED ON ALLEGED VIOLATIONS OF FEDERAL LAW

There is a second reason that the Eleventh Amendment does not bar enforcement of the decree. Under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), and the principles that govern the entry and enforcement of consent decrees, the Eleventh Amendment does not bar enforcement of a consent decree that provides prospective relief against state officials based on alleged violations of federal law.

A. Under *Ex parte Young*, a suit that alleges a violation of federal law and seeks prospective relief against state officials does not implicate the Eleventh Amendment. "In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md. Inc.* v. *Public Service Comm'n*, 535 U.S. 635, 645 (2002). "[T]he inquiry into whether suit lies under *Ex parte Young* does not include an analysis of the merits of the claim." *Id.* at 646.

Petitioner's original complaint in this case alleged an ongoing violation of federal requirements imposed by the EPSDT program under the Medicaid statute and

sought prospective relief against state officials. Petitioners' suit therefore falls squarely within the *Ex parte Young* doctrine. The relief ordered by the consent decree also falls within the *Ex parte Young* doctrine. The consent decree ordered prospective relief against state officials based on claimed violations of federal law. Finally, judicial enforcement of the decree also falls within the *Ex parte Young* doctrine. As this Court has explained, "[i]n exercising their prospective powers under *Ex parte Young*, * * * federal courts are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced." *Hutto* v. *Finney*, 437 U.S. 678, 690 (1978).

B. The court of appeals did not hold that the Eleventh Amendment precluded the district court from entering the consent decree in the first place. Instead, it concluded that the Eleventh Amendment bars enforcement of the decree unless petitioners can show that a violation of the decree also independently violates a provision of federal law governing the EPSDT program that is actionable under 42 U.S.C. 1983. The court reasoned that even if a court has authority to enter a consent decree that contains relief that is broader than the court could have awarded after a trial, a court "must fall back on its own jurisdiction when it issues an order *enforcing* the decree." Pet. App. 27a. In the court's view, that means that a federal court is limited to remedying practices that independently violate federal law and that are remediable under Section 1983. *Ibid.*

That theory directly conflicts with decisions of this Court that make clear that a court has inherent authority to enforce a valid decree, including decrees that are entered by consent. *Kokkonen*, 511 U.S. at 381;

Spallone, 493 U.S. at 276; *Firefighters*, 478 U.S. at 518; *Hutto*, 437 U.S. at 690; *Gunter*, 200 U.S. at 292. As other courts of appeals have recognized, the rule that emanates from this Court's decisions is simple: "[i]f a federal court can validly enter a consent decree, it can surely enforce that decree." *Kozlowski*, 871 F.2d at 244; *Wisconsin Hosp. Ass'n* v. *Reivitz*, 820 F.2d 863, 868 (7th Cir. 1987) (Posner, J.) ("[I]f a decree is valid an order enforcing it is not barred by the Eleventh Amendment."); see *Vecchione* v. *Wohlgemuth*, 558 F.2d 150, 158 (3d Cir.), cert. denied, 434 U.S. 943 (1977). Under the court of appeals' contrary view, state officials who have secured entry of a consent decree that contains relief that exceeds the requirements of federal law would be free the very next day to disregard the order they secured. *Vecchione*, 558 F.2d at 158. No decision of this Court suggests that state officials may so subvert the administration of justice in federal courts.

The court of appeals concluded that it is antithetical to principles of state sovereignty to require state officials to comply with requirements in a decree that exceed the requirements of the federal law that gave rise to the decree. But as this Court has explained, in order to "save themselves the time, expense, and inevitable risk of litigation," state officials may settle disputes "by undertaking [in a consent decree] to do more than [federal law] itself requires," and "more than what a court would have ordered absent the settlement." *Rufo*, 502 U.S. at 389 (citation omitted); *Firefighters*, 478 U.S. at 525. State officials are under no compulsion to seek entry of such decrees. But once such a decree is entered with the consent of state officials, it has the same status as any other judgment of a federal court. State officials have a duty to comply with the require-

ments in the decree, and, if they do not, federal courts have authority to enforce compliance.

As previously discussed, to the extent that prospective enforcement of a decree is inequitable, state officials may seek its modification. But they may not unilaterally disregard the court's judgment and then resist enforcement of the judgment on Eleventh Amendment grounds.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MAY 2003